IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3294 OF 2006

Rajan J. Gaikwad & Anr. .. Applicants
Versus
State of Maharashtra .. Respondent

Mr.S.U.Marwadi for applicants
Ms.Rajeshree Gadhavi, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 12th September 2006.

P.C.

. Heard Mr.Marwadi for applicants and Ms.Gadhvi, A.P.P. for State. Learned A.P.P. states that the concerned I.O. is not present despite due notice and intimation of the date of hearing of this application.

2. I see no reason to adjourn hearing of this application when the application was duly served on 5th September 2006. On that date it was

adjourned till 11th September 2006 and the applicants were directed not to be arrested till then. The application was then, adjourned till today.

3. Applicants are two Government officers working as Range Forest Officer and Forester in the Forest Department. Applicant No.2 is himself belonging to scheduled caste. They are public servants. They specifically stated that they belong to scheduled tribe and Scheduled Caste, details of which are set out in the application. They apprehend their arrest in C.R. No.31 of 2005 which is registered under sections 354, 504, 506 of I.P.C. and section 3(1) and 10 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

4. In the application it is stated in details, according to Mr.Marwadi, as to how the case registered against the present applicants is

false and malafide. During the course of their duties, applicants are required to apprehend and take action against encroachers on forest land and properties. During the course of their duties they have taken action against the complainant who is in unlawful possession of the forest/Government land. My attention is invited by Mr.Marwadi to the statement recorded in the case which was filed by the present applicants alleging commission of offences under the Indian Forest Act, 1927. It is Mr.Marwardi's submission that, as a counter blast to this case and with a view to falsely implicate the applicants in criminal proceedings that the very encroachers, who are named as accused in the case filed by the applicants, have registered the present C.R. He also invites my attention to a communication of the Chief Conservator (Regional) of Forest, Nashik addressed to the Dy.Superintendent of Police, Nashik Rural pointing out the entire history of the matter and refusing permission to

arrest the present applicants or take any proceedings so also grant of any sanction in that behalf.

5. It is in such circumstances that the learned Additional Sessions Judge granted interim protection from 10th August 2006 but refused to continue the same by the order under challenge.

6. Learned Judge in para 4 of his order has observed as under:-

> "4. Perused the material on record. No doubt it revealed that criminal action is taken by the present applicants against Bababai Lahange and some others and that Bababai Lahange has also filed the present complaint against present applicants. However, considering the fact that the charge sheet is already submitted there appears no substance in

the apprehension of arrest of the applicants since investigation of said crime is completed. Furthermore, in view of the specific provision of Section 18 of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989, the application for anticipatory bail under the provisions of Section 438 of Cr.P.C. cannot be entertained. The learned Counsel placed reliance on the decision of the Hon'ble Gujarat High Court. However, with deep respect in my mind the same is not binding on this court. Furthermore, considering the documents produced on record, it cannot be said that the complaint lodged against the applicants is false and vexatious and by way of counter blasts to the previous action taken by the applicants against the complainant Bababai Lahange and Others. Hence I am inclined to pass the

following order:-

Application stands rejected."

7. Learned A.P.P. has no instructions and all the averments in the application so also the grounds raised remained unchallenged.

8. Learned Sessions Judge was fully aware of the fact that in the case registered by the applicants as also the present case, charge sheet is filed. In such circumstances, one cannot understand the approach of the learned Judge in not protecting the applicants till they apply for bail before the regular court and to enable them to do so, he ought to have continued the ad-interim orders in that behalf.

9. Be that as it may, after perusing the application and annexures thereto and hearing Counsel, in my view, interest of justice would be

sub-served if the direction issued by this Court on 5th September 2006 is continued for a period of three weeks from today to enable the applicants to apply to the regular court for being enlarging on regular bail. However, it is clarified that in the meanwhile the applicants shall report to the concerned police station as and when summoned. Rest of the conditions for pre-arrest bail as stipulated hereinbelow shall also have to be complied with.

i) The bail is granted subject to condition that the applicants will attend the Wadivarhe Police station as and when summoned.

ii) Bail is granted subject to condition that the applicants shall not, directly or indirectly, make any inducement, threat or promise to any

person acquainted with the facts of accusation against them so as to dissuade him from disclosing such facts to the Court or to the police officer/ investigating agency. The applicants shall not tamper with the prosecution evidence.

iii) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial

iv) This order will enure to the benefit of the applicants only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

v) Application is disposed of in

above terms.

vi) The parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)